

UNITED STATES DISTRICT COURT
EASTERN DISTRICT OF CALIFORNIA

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ARROWOOD INDEMNITY COMPANY, a
Delaware corporation, formerly
known as ROYAL INSURNACE
COMPANY, and successor to ROYAL
GLOBE INSURANCE COMPANY,

Plaintiff,

v.

CITY OF WEST SACRAMENTO; and
ROES 1-50, inclusive,

Defendant.

No. 2:21-cv-00397 WBS JDP

ORDER

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The parties have filed cross motions for summary judgment, (Docket Nos. 41, 48), currently set for oral argument on December 13, 2021. Defendant City of West Sacramento concurrently filed a "Motion in Limine" to exclude testimony of plaintiff's expert witness, Thomas Delfino, to be heard the same day. (Docket No. 47).

A motion in limine is typically a motion regarding

1 preliminary matters related to the trial. See City of Pomona v.
2 SQM N. Am. Corp., 886 F.3d 1060, 1070 (9th Cir. 2017). However,
3 defendant states that the motion "can't wait for a pre-trial
4 hearing." (Mot. in Limine at 2 (Docket No. 47-1).) Accordingly,
5 given the current stage of this litigation, the court construes
6 defendant's Motion in Limine as a motion to strike Delfino's
7 testimony from consideration as the court decides the parties'
8 cross motions for summary judgment. Therefore, the court cannot
9 properly consider the cross motions for summary judgment until it
10 considers the preliminary matter of the admissibility of
11 Delfino's testimony.


12 Plaintiff Arrowood Indemnity Company requests that the
13 court, in considering defendant's Motion in Limine, hold a
14 Daubert hearing to evaluate the admissibility of Delfino's
15 testimony. (Opp. at 31 (Docket No. 50).) A Daubert hearing is
16 properly requested at the summary judgment stage. See Nixon-Egli
17 Equipment Co. v. John A. Alexander Co., 949 F. Supp. 1435, 1447
18 (C.D. Cal. 1996) ("As the Ninth Circuit has . . . made clear, the
19 Daubert standard can be invoked at the summary judgment stage as
20 well as at trial or in motions in limine. In the Court's
21 experience, a well-reasoned Daubert motion can be dispositive in
22 cases such as the one at bar; at the very least, such motions can
23 limit the issues for trial.") (citing Lust v. Merrell Dow Pharm.,
24 Inc., 89 F. 3d 594 (9th Cir. 1996)).

25 Accordingly, the hearing on the parties' cross motions
26 for summary judgment is vacated, and the court will hear argument
27 on defendant's Motion in Limine on December 13, 2021 at 1:30 p.m.
28 via videoconference. Counsel for plaintiff is directed to have

1 Thomas Delfino present via Zoom for questioning on the Daubert
2 issue at that time. The hearing on the cross motions for summary
3 judgment will be reset after the court's ruling on the motion in
4 limine.

5 IT IS SO ORDERED.

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7 Dated: December 3, 2021


WILLIAM B. SHUBB
UNITED STATES DISTRICT JUDGE